

109TH CONGRESS
1ST SESSION

S. 708

To amend title XVIII of the Social Security Act to provide medicare beneficiaries with access to information concerning the quality of care provided by skilled nursing facilities and to provide incentives to skilled nursing facilities to improve the quality of care provided by those facilities by linking the amount of payment under the medicare program to quality reporting and performance requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 5, 2005

Mr. WYDEN (for himself and Mr. SMITH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to provide medicare beneficiaries with access to information concerning the quality of care provided by skilled nursing facilities and to provide incentives to skilled nursing facilities to improve the quality of care provided by those facilities by linking the amount of payment under the medicare program to quality reporting and performance requirements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Long Term Care Qual-
3 ity and Consumer Information Improvement Act of
4 2005”.

5 **SEC. 2. MEDICARE PAYMENT ADJUSTMENTS FOR SKILLED**
6 **NURSING FACILITIES BASED ON QUALITY**
7 **DATA.**

8 (a) IN GENERAL.—Section 1888(e) of the Social Se-
9 curity Act (42 U.S.C. 1395yy(e)) is amended by adding
10 at the end the following new paragraph:

11 “(13) PAYMENT ADJUSTMENTS BASED ON
12 QUALITY DATA.—

13 “(A) ESTABLISHMENT OF QUALITY MEAS-
14 URES.—

15 “(i) IN GENERAL.—Subject to the
16 succeeding provisions of this subparagraph,
17 not later than 6 months after the date of
18 enactment of the Long Term Care Quality
19 and Consumer Information Improvement
20 Act of 2005, the Secretary shall establish
21 between 10 and 15 quality measures appli-
22 cable with respect to skilled nursing facili-
23 ties in addition to any quality measures
24 applicable with respect to such facilities es-
25 tablished prior to January 1, 2005.

1 “(ii) CONSULTATION.—In establishing
 2 the quality measures under clause (i), the
 3 Secretary shall consult with—

4 “(I) residents of skilled nursing
 5 facilities;

6 “(II) representatives of patient
 7 advocacy organizations;

8 “(III) State regulatory represent-
 9 atives;

10 “(IV) representatives from the
 11 skilled nursing facility industry; and

12 “(V) experts on quality measures.

13 “(iii) STAFFING AND MIX OF LI-
 14 CENSED STAFF.—At least one of the qual-
 15 ity measures established under clause (i)
 16 shall relate to the level of skilled nursing
 17 facility staffing and the mix of licensed
 18 staff.

19 “(iv) ESTABLISHMENT AND APPLICA-
 20 TION OF RISK ADJUSTMENT METHOD-
 21 OLOGY.—The quality measures established
 22 under clause (i) shall take into account the
 23 relative risks associated with the popu-
 24 lation of each skilled nursing facility to en-
 25 sure that the differences in the quality

1 measures reflect differences in the care
2 provided by the facilities and not dif-
3 ferences in resident population characteris-
4 ties by using a risk adjustment method-
5 ology established for purposes of this sub-
6 section. The risk adjustment methodology
7 established and applied under this clause
8 may exclude certain types of residents,
9 stratify residents into high-risk and low-
10 risk groups, or use a statistical adjust-
11 ment, such as a regression analysis, that
12 takes into consideration multiple character-
13 istics for each resident.

14 “(v) SPECIAL PROVISION FOR SMALL
15 SKILLED NURSING FACILITIES.—The Sec-
16 retary, in consultation with the individuals
17 and groups described in clause (ii), shall
18 establish criteria for determining which
19 quality measures established under clause
20 (i) do not apply with respect to skilled
21 nursing facilities that are not large enough
22 to yield meaningful data with respect to
23 such measure.

24 “(vi) ANNUAL REVIEW AND REVI-
25 SION.—The Secretary, in consultation with

the individuals and groups described in clause (ii), shall annually review and revise the quality measures established under clause (i), as the Secretary, in consultation with such individuals and groups, determines appropriate.

“(B) REPORTING ON QUALITY MEASURES.—

“(i) SUBMISSION OF DATA.—Each skilled nursing facility that desires to receive a payment adjustment under subparagraph (C) shall submit such data at such time and in such form and manner as the Secretary, in consultation with the individuals and groups described in subparagraph (A)(ii), requires for purposes of applying the quality measures established under subparagraph (A)(i).

“(ii) PUBLICATION OF QUALITY RATINGS.—Not less frequently than annually, the Secretary shall cause to be posted on the Internet website of the Centers for Medicare & Medicaid Services and to be published in newspapers with a national circulation a quality rating for each skilled

nursing facility submitting data under clause (i) by using such data to apply the quality measures established under subparagraph (A)(i) to each facility.

“(C) ADDITIONAL PAYMENT AMOUNT.—

“(i) IN GENERAL.—Subject to clause (iv), each skilled nursing facility that submits data under subparagraph (B)(i) shall receive the update described in clause (ii) and the payment adjustment described in clause (iii).

“(ii) FULL MARKET BASKET UPDATE.—Notwithstanding paragraph (4)(E)(ii) or any other provision of law, each skilled nursing facility described in clause (i) shall receive the full market basket update for the year following the year in which such data is submitted.

“(iii) PAYMENTS BASED ON QUALITY.—The Secretary shall adjust the total payment amount under this subsection for skilled nursing facilities described in clause (i) as follows:

“(I) Beginning with fiscal year 2007, for each of the skilled nursing

1 facilities that the Secretary deter-
2 mines, based on the quality measures
3 established under subparagraph (A)(i)
4 for the preceding fiscal year, to be—

5 “(aa) in the top 10 percent
6 of all nursing facilities that sub-
7 mitted data under subparagraph
8 (B)(i) during the preceding fiscal
9 year, each payment amount de-
10 termined under the other provi-
11 sions of this subsection shall be
12 increased by 2 percent of that
13 amount; and

14 “(bb) below the top 10 per-
15 cent of such nursing facilities,
16 but within the top 20 percent of
17 such facilities, each payment
18 amount determined under the
19 other provisions of this sub-
20 section shall be increased by 1
21 percent of that amount.

22 “(II) Beginning with fiscal year
23 2008, for each of the skilled nursing
24 facilities that the Secretary deter-
25 mines, based on the quality measures

1 established under subparagraph
2 (A)(i), to be in the bottom 20 percent
3 of all nursing facilities that submitted
4 data under subparagraph (B)(i), each
5 payment amount determined under
6 the other provisions of this subsection
7 shall be decreased by 1 percent of
8 that amount.

9 “(iv) SPECIAL PROVISION FOR SMALL
10 SKILLED NURSING FACILITIES.—The Sec-
11 retary may not refuse to provide a full
12 market basket update under clause (ii) or
13 to provide an increase or reduction under
14 clause (iii) with respect to a skilled nursing
15 facility because such facility does not sub-
16 mit data with respect to a quality measure
17 that does not apply to the nursing facility
18 as a result of the application of the criteria
19 established under subparagraph (A)(v).

20 “(D) BUDGET NEUTRALITY.—In imple-
21 menting this paragraph, the Secretary shall en-
22 sure that the aggregate amount of expenditures
23 made by the Secretary under this title in a fis-
24 cal year does not exceed the aggregate amount
25 which the Secretary would have expended under

1 this title in the year if this paragraph had not
2 been enacted. In determining the aggregate
3 amount which the Secretary would have ex-
4 pended under this title in the year if this para-
5 graph had not been enacted, the Secretary shall
6 assume a current services budget baseline that
7 includes in the assumption of current services a
8 level of expenditures for covered skilled nursing
9 facility services that reflects a continuation of
10 the Resource Utilization Groups (RUGS) that
11 were used for making payments under this sec-
12 tion during fiscal year 2005.”.

13 (b) EVALUATION AND REPORT.—

14 (1) EVALUATION.—The Secretary of Health
15 and Human Services shall conduct an evaluation of
16 the implementation of the amendment made by sub-
17 section (a), including an evaluation of the number of
18 skilled nursing facilities that submit the data pursu-
19 ant to paragraph (13)(B) of section 1888(e) of the
20 Social Security Act (42 U.S.C. 1395yy(e)), as added
21 by subsection (a).

22 (2) REPORT.—Not later than December 31,
23 2008, the Secretary of Health and Human Services
24 shall submit a report to Congress on the evaluation
25 conducted under paragraph (1) together with rec-

- 1 ommendations for such legislation and administra-
- 2 tive actions as the Secretary considers appropriate.

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